

UNITED STATES OF AMERICA  
POSTAL REGULATORY COMMISSION  
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Acting Chairman;  
Nanci E. Langley, Vice Chairman;  
Mark Acton; and  
Tony Hammond

Periodic Reporting  
(Proposal Four)

Docket No. RM2016-12

ORDER DENYING REQUESTS TO FILE ADDITIONAL RESPONSES

(Issued November 29, 2016)

On November 21 and 22, 2016, United Parcel Service Inc. (UPS) and the Public Representative filed separate motions<sup>1</sup> which request permission to file responses to the reply comments and supporting material filed by the Postal Service and Amazon Fulfillment Services, Inc. (AFSI).<sup>2</sup> AFSI and the Postal Service each filed in opposition

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<sup>1</sup> Motion of United Parcel Service Inc. for Leave to File a Response to Reply Comments and Expert Materials Submitted by United States Postal Service and Amazon Fulfillment Services, Inc., November 21, 2016 (UPS Motion); Motion of Public Representative for Leave to Respond to Reply Comments and Expert Materials Submitted by United States Postal Service and Amazon Fulfillment Services, Inc., November 22, 2016 (Public Representative Motion).

<sup>2</sup> See Reply Comments of Amazon Fulfillment Services, Inc. Declaration of T. Scott Thompson on Behalf of Amazon Fulfillment Services, Inc., November 14, 2016; Reply Comments of the United States Postal Service and the accompanying Report to Accompany the Postal Service's Reply Comments in Docket No. RM2016-12, Michael D. Bradley, both filed November 14, 2016.

to the UPS motion.<sup>3</sup> The Postal Service separately filed in opposition to the Public Representative Motion.<sup>4</sup>

*UPS Motion.* UPS contends that AFSI and the Postal Service repeatedly misconstrue the report attached to UPS's initial comments (the Brattle Report).<sup>5</sup> UPS maintains that they do this by critiquing the simulation model documented in the Brattle Report and then argue that alleged failures of that model undermine the conceptual and economic arguments made elsewhere in the Brattle Report. UPS Motion at 2. However, as UPS states, the model was intended only as an illustration and in no way is representative of its understanding of the actual postal system. *Id.*

UPS also contends that Bradley, in the report accompanying the Postal Service's reply comments, calculates a new set of variabilities of capacity with respect to volume which are significantly different from those included in the initial proposal. *Id.* UPS alleges that by recalculating variabilities, the Postal Service admits that Bradley's initial analysis was incorrect. *Id.* In light of these issues, UPS requests an opportunity to respond. UPS suggests a response deadline of December 5, 2016. *Id.* at 3.

*Public Representative Motion.* The Public Representative supports the UPS Motion and independently asks for leave to file his own response. Public Representative Motion at 2. He asserts that AFSI and the Postal Service have misconstrued important issues and that the Commission would benefit from his response concerning the implications of the erroneous arguments made by AFSI and the Postal Service. *Id.* at 1.

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<sup>3</sup> Amazon Fulfillment Services, Inc.'s Opposition to Motion of United Parcel Service, Inc. for Leave to File Sur-Reply Comments, November 22, 2016 (AFSI Opposition); Opposition of the United States Postal Service to UPS Motion Seeking Leave to Respond to Reply Comments, November, 22, 2016 (Postal Service Opposition to UPS Motion).

<sup>4</sup> Opposition of the United States Postal Service to Public Representative Motion Seeking Leave to Respond to Reply Comments, November 23, 2016 (Postal Service Opposition to Public Representative Motion).

<sup>5</sup> *Id.* at 2. See United Parcel Service Comments on Postal Service Proposal Four Regarding Proposed Changes in Analytical Principles and the accompanying Report of Dr. Kevin Neels and Dr. Nicholas Powers to Accompany UPS Comments in Docket No. RM2016-12, both filed October 17, 2016.

*AFSI Opposition to UPS Motion.* AFSI asserts that its reply comments and supporting declaration do not go beyond the scope of the comments and declaration filed by UPS. AFSI Opposition at 1. Thus, it argues that there is no need or basis for requesting leave to file an additional response. *Id.* Furthermore, AFSI states that its discussion of the UPS simulation model does not rise to the level of requiring a reply because, just as UPS asserts in its motion, the simulation model is only intended as an illustration and is not representative of an understanding of the actual postal system. *Id.*

*Postal Service Opposition to UPS Motion.* The Postal Service explains that Commission rules do not allow for a response as a matter of right, but only at the discretion of the Commission. Postal Service Opposition to UPS Motion at 1. It asserts that this discretion should only be exercised when extraordinary circumstances exist. *Id.* The Postal Service contends that no such circumstances exist in this docket. *Id.*

The Postal Service argues that if, in fact, AFSI and the Postal Service have misconstrued the simulation exercise discussed in the Brattle Report, there is no reason why the Commission cannot make its own assessment of the conflicting arguments and recognize this alleged flaw. The Postal Service further asserts the new calculations provided by Bradley were directed solely at demonstrating that the criticisms of his original analysis were not valid. The Postal Service contends UPS's allegation that this new material amounts to an admission that the original analysis was incorrect grossly distorts the facts. *Id.* at 2. The Postal Service concludes by questioning UPS's request for needing three weeks to formulate a response when UPS also asserts that the response would not be used as a vehicle to raise new arguments, but only to reply to comments where it did not have a previous opportunity to respond. *Id.* at 3.

*Postal Service Opposition to Public Representative Motion.* The Postal Service argues that the Public Representative "has provided no suitable basis to alter the orderly conduct of proceedings previously established." Postal Service Opposition to Public Representative Motion at 2. As with the UPS Motion, the Postal Service contends that the Public Representative Motion should be denied. *Id.*

*Commission analysis.* Rule 39 C.F.R. § 3001.41, concerning rulemaking proceedings, prescribe that “the Commission shall give interested persons an opportunity to participate in the rulemaking through submission of written data, views, or arguments with or without opportunity for oral presentation.” The Commission has established this docket as an informal rulemaking and has provided the opportunity for participation through filing both initial and/or reply comments.<sup>6</sup>

In informal rulemakings, the Commission has discretion to request additional rounds of comments or grant requests for additional comments where it can be demonstrated that these comments would serve to better inform the Commission as to various aspects of the rulemaking. In this rulemaking, the Commission is capable of evaluating the competing arguments presented by the participants in initial and reply comments without the provision of additional argument. The AFSI and Postal Service critiques of the Brattle Report simulation model are examples of arguments the Commission is capable of evaluating.

The Postal Service has presented a limited amount of new material in its reply comments in response to initial comments filed by other participants. The new material does not appear to rise to the level of fundamentally changing the Postal Service’s initial proposal in this docket. Thus, the provision of the new material does not warrant granting a request to provide an additional round of comments.

The UPS and the Public Representative motions for leave to file additional responses are denied.

*It is ordered:*

1. The Motion of United Parcel Service Inc. for Leave to File a Response to Reply Comments and Expert Materials Submitted by United States Postal Service and Amazon Fulfillment Services, Inc., filed on November 21, 2016, is denied.

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<sup>6</sup> See Order No. 3482, Notice of Proposed Rulemaking on Analytical Principles Used in Periodic Reporting (Proposal Four), August 24, 2016.

2. The Motion of Public Representative for Leave to Respond to Reply Comments and Expert Materials Submitted by United States Postal Service and Amazon Fulfillment Services, Inc., filed on November 22, 2016, is denied.

By the Commission.

Stacy L. Ruble  
Secretary